

STATE OF TENNESSEE

Office of the Attorney General



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Reply to:  
Consumer Advocate and Protection Division  
Post Office Box 20207  
Nashville, TN 37202

January 2, 2004

Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

IN RE: PETITION FOR EXEMPTION OF CERTAIN SERVICES  
DOCKET NO. 03-00391

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's *Petition to Intervene* in regards to Docket No. 03-00391. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615)532-2590. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Joe Shirley".

JOE SHIRLEY  
Assistant Attorney General

cc: All Parties of Record

#66649

**IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>PETITION FOR EXEMPTION OF</b>	)	<b>DOCKET NO. 03-00391</b>
<b>CERTAIN SERVICES</b>	)	

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**PETITION TO INTERVENE**

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Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. §§ 65-4-118(c)(2)(A) and 4-5-310(a), and petitions the Tennessee Regulatory Authority ("TRA") to grant the Consumer Advocate's intervention in the above-captioned matter because the interests of consumers may be determined in this proceeding to consider exemption of certain services from regulation.

For cause, the Consumer Advocate would show unto the TRA as follows:

1. On June 16, 2003, BellSouth Telecommunications, Inc. ("BellSouth") and Citizens Communications, Inc. ("Citizens") filed their joint *Petition for Exemption of Certain Services*.
2. BellSouth is a price-regulated incumbent local exchange carrier, regulated by the TRA, and offering telecommunications services to Tennessee consumers. BellSouth's address for service of process is 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-3300.
3. Citizens is a price-regulated incumbent local exchange carrier, regulated by the TRA, and offering telecommunications services to Tennessee consumers. Citizens' address for service of process is 424 Church Street, Suite 2800, Nashville, Tennessee 37219-2386.
4. BellSouth and Citizens (collectively "Petitioners") seek an exemption of IntraLATA Toll Service and Primary Rate ISDN Service from the regulatory requirements contained in Tenn.

Code Ann. Title 65, Chapter 5, Part II.

5. Petitioners seek an exemption pursuant to Tenn. Code Ann. § 65-5-208(b), which states:

The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications service providers from such requirements as appropriate. The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.

6. On September 29, 2003, the TRA entered its *Order Convening a Contested Case Proceeding and Appointing a Hearing Officer* in this matter.

7. On December 11, 2003, the Hearing Officer entered his *Order Granting Petitions to Intervene and Requesting Proposed Procedural Schedules*. Therein, the Hearing Officer granted the intervention requests of AT&T Communications of the South Central States, LLC ("AT&T"), Southeastern Competitive Carriers Association ("SECCA"), and Time Warner Telecom of the MidSouth, LLC ("Time Warner").

8. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 (c)(2)(A) to represent the interests of Tennessee consumers of public utilities services by intervening as a party in any matter or proceeding before the TRA, in accordance with the Uniform Administrative Procedures Act ("UAPA").

9. Tenn. Code Ann. § 4-5-310(a) provides that petitions for intervention shall be granted if the petition is submitted in writing with copies mailed to all named parties at least seven days before the hearing on the matter; the petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or

that the petitioner qualifies as an intervenor under any provision of law; and the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

10. The TRA has not yet established a procedural schedule for this matter, nor has the agency issued any notice of a contested case hearing in this docket.

11. The Consumer Advocate qualifies as an intervenor under Tenn. Code Ann. § 65-4-118(c)(2)(A).

12. As price-regulated telecommunications carriers, Petitioners' prices and terms of IntraLATA Toll Service and Primary Rate ISDN Service currently are governed by Tenn. Code Ann. § 65-5-209, Petitioners' price regulation plans, and the anti-competitive and unjust discrimination safeguards of Title 65. The General Assembly instituted these regulations to benefit and protect consumers by encouraging the development of competitive telecommunications markets and assuring the availability of affordable basic and non-basic telecommunications services on a non-discriminatory basis. *See, e.g.*, Tenn. Code Ann. §§ 65-4-123, 65-5-204(a), 65-5-208(c), 65-5-209(b)&(e). Petitioners' request for exemption of IntraLATA Toll Service and Primary Rate ISDN Service has the potential for altering or removing all or a portion of these requirements.

13. The Consumer Advocate is also concerned about the impact that any proposed exemption of IntraLATA Toll Service and Primary Rate ISDN Service would have on other local telephone companies, particularly rate-of-return regulated companies governed by Tenn. Code Ann. § 65-5-203. For instance, this proceeding has the potential of affecting the general telephone rates that consumers pay rate-of-return regulated companies if the revenues, expenses, and/or investment attributable to IntraLATA Toll Service and Primary Rate ISDN Service are exempted from

regulation.

14. Accordingly, the interests of Tennessee consumers may be determined in this proceeding.



15. The Consumer Advocate's intervention in this docket is in the interests of justice as such intervention would permit Tennessee consumers to appear and be heard on Petitioners' request to exempt IntraLATA Toll Service and Primary Rate ISDN Service from regulatory requirements.


16. The Consumer Advocate does not seek to delay or impair the orderly and prompt conduct or resolution of this proceeding.

17. Only by intervening and participating in this proceeding can the Consumer Advocate work effectively to represent and protect the interests of Tennessee consumers of IntraLATA Toll Service, Primary Rate ISDN Service, and other regulated telecommunications services.

WHEREFORE, the Consumer Advocate prays that the TRA will grant its Petition to Intervene, and grant such other relief as may be deemed appropriate under the law.

RESPECTFULLY SUBMITTED,

  
PAUL G. SUMMERS, B.P.R. #6285   
Attorney General  
State of Tennessee

  
JOE SHIRLEY, B.P.R. #022287  
Assistant Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 532-2590

Dated: January 2, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served via facsimile or first-class U.S. Mail, postage prepaid, on January 2, 2004, upon:

Joelle Phillips, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300

Guilford F. Thornton, Jr., Esq.  
Stokes, Bartholomew, Evans & Petree  
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Atlanta, Georgia 30309

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JOE SHIRLEY  
Assistant Attorney General

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